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In re Application of
WILLNER, Stig, et al.
Application No.: 10/009,860
PCT No.: PCT/SE00/00727
Int. Filing Date: 17 April 2000
Priority Date: 30 April 1999
Attorney's Docket No.: CU-2691 RJS
For: ADJUSTABLE SPINAL BRACE

DECISION ON
PAPERS

UNDER 37 CFR 1.42

This is a decision on applicants' second submission of items concerning a filing under 35 USC 371, filed 08 January 2002. A review of the Declaration reveals an indication that joint inventor Stig Willner is deceased. Applicants' submission has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 17 April 2000, applicants filed international application PCT/SE00/00727, which claimed a priority date of 30 April 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 09 November 2000. On 17 November 2000, a demand for international preliminary examination was filed within nineteen months from the priority date. As such, the deadline for entry into the national stage in the United States was 30 October 2001.

On 26 October 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 08 January 2002, applicants filed a declaration accompanied by the fee for filing the declaration later than thirty months from the priority date.

On 23 February 2002, USPTO mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a)-(b) was required.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the

patent." 37 CFR 1.42. However, the declaration must include the signature of the legal representative or the signature of all of the heirs (or if there is only one heir, the sole heir), if under applicable law, the heirs' authority corresponds to that of a legal representative. See MPEP 409.01(d).

In this case, Ms. Eva Willner signed the declaration as "heiress of deceased inventor, Stig Willner." However, she did not identify herself as either the "sole heir" or the "legal representative" of inventor Willner's estate. This leaves open the possibility of additional non-signing heirs.

Additionally, the declaration must list the citizenship, residence and postal address for both Ms. Willner and inventor Willner. See 37 CFR 1.497 and 37 CFR 1.63. The declaration does not list the required information for inventor Willner.

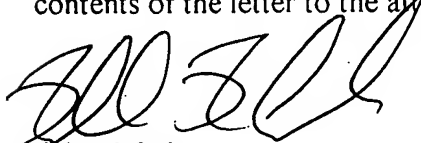
CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

The Notification of Missing Requirements mailed 23 February 2002 is **VACATED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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